

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 4.5, instructing the jury how prior inconsistent statements can be used, effective August 2017.

[AMENDED] M Crim JI 4.5
Prior Inconsistent Statement
Used to Impeach Witness

You have heard evidence that, before the trial, [a witness/witnesses] made [a statement/statements] that may be inconsistent with [his/her/their] testimony here in court.

(1) You may consider an inconsistent statement made before the trial [only]¹ to help you decide how believable the [witness'/witnesses'] testimony was when testifying here in court.

(2) If the earlier statement was made under oath, then you may also consider the earlier statement as evidence of the truth of whatever the [witness/witnesses] said in the earlier [statement/statements] when determining the facts of this case.²

Use Notes

1. If the statement is admissible only as impeachment, use [only], and do not read (2). If the statement is also admissible as substantive evidence under MRE 801(d)(1), do not use [only] and read both (1) and (2).

2. Other out-of-court inconsistent statements may also be admissible as substantive evidence. The court may modify the instruction under appropriate circumstances.

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 15.3, the “operating while intoxicated” instruction, for violations of MCL 257.625, effective August 2017.

[AMENDED] M Crim JI 15.3
Specific Elements of Operating
While Intoxicated [OWI]

(1) To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant [*choose from the following*]:

(a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood/210 liters of breath/67 milliliters of urine];¹

(b) was under the influence of alcohol while operating the vehicle;

(c) was under the influence of a controlled substance while operating the vehicle;

(d) was under the influence of an intoxicating substance while operating the vehicle;

(e) was under the influence of a combination of [alcohol/a controlled substance/an intoxicating substance]² while operating the vehicle.

[*Choose (i), (ii), or (iii) as appropriate:*]

(i) [*Name substance*] is a controlled substance.

(ii) [*Name substance*] is an intoxicating substance.³

(iii) An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(2) [“Under the influence of alcohol”/“Under the influence of a controlled substance”/“Under the influence of an intoxicating substance”] means that because of [drinking alcohol/using or consuming a controlled substance/consuming or taking into (his/her) body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has [drunk alcohol or smells of alcohol/consumed or used a controlled substance/consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol/a controlled substance/an intoxicating substance]. The test is whether, because of [drinking alcohol/using or consuming a controlled substance/consuming or taking into (his/her) body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

Use Notes

1. If the defendant is charged with OWI by virtue of bodily alcohol content only, use the appropriate bracketed material in this paragraph (1)(a) and do not use any of the following paragraphs (1)(b) through (4). If the defendant is charged with OWI by virtue of operating under the influence of alcohol, a controlled substance, or an intoxicating substance only, do not use this paragraph (1)(a), but use the appropriate alternative paragraphs (1)(b)–(e) with the associated paragraph (2), (3) or (4). If the defendant is charged with OWI alternatively as having an unlawful bodily alcohol content or operating under the influence of alcohol or a substance, use the appropriate paragraphs based on the evidence presented.

2. Select the appropriate combination of alcohol or substances based on the evidence presented.

3. Certain substances are intoxicating substances as a matter of law. The sources for determining those substances are found in MCL 257.625(25)(a)(i).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 17.25, for violations of MCL 750.411h and 750.411i to add language for the presumption found in MCL 750.411h(4) and 750.411i(5), effective August 2017.

[AMENDED] M Crim JI 17.25
Stalking

(1) [The defendant is charged with/You may consider the lesser offense of] stalking. To establish this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant committed two or more willful, separate, and noncontinuous acts of unconsented contact with [*name complainant*].

(3) Second, that the contact would cause a reasonable individual to suffer emotional distress.

(4) Third, that the contact caused [*name complainant*] to suffer emotional distress.

(5) Fourth, that the contact would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) Fifth, that the contact caused [name complainant] to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[For aggravated stalking, add the following:]

(7) Sixth, the stalking

[was committed in violation of a court order]

[was committed in violation of a restraining order of which the defendant had actual notice]

[included the defendant making one or more credible threats against [name complainant], a member of (his/her) family, or someone living in (his/her) household]

[was a second or subsequent stalking offense].

[Where appropriate under the evidence, add the following:]

(8) You have heard evidence that the defendant continued to make repeated unconsented contact with [name complainant] after [he/she] requested the defendant to discontinue that conduct or some different form of unconsented contact, and requested the defendant to refrain from any further unconsented contact. If you believe that evidence, you may, but are not required to, infer that the continued course of conduct caused [name complainant] to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Even if you make that inference, remember that the prosecutor still bears the burden of proving all of the elements of the offense beyond a reasonable doubt.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instructions, M Crim JI 36.7 and M Crim JI 36.8, cautionary instruc-

tions for violations of the Human Trafficking Act, MCL 750.462a, effective August 2017.

[NEW] M Crim JI 36.7 Testimony of Victim Not Required/ Need Not Be Corroborated

[Select (1) or (2) where applicable.]

(1) To prove this charge, testimony from [name complainant] is not required, as long as the evidence presented proves guilt beyond a reasonable doubt.

(2) To prove this charge, it is not necessary that there be evidence other than the testimony of [name complainant], if that testimony proves guilt beyond a reasonable doubt.

[NEW] M Crim JI 36.8 Victim's Resistance or Lack of Resistance Not Relevant

When considering whether the prosecutor has proved this charge, you should not consider whether [name complainant] resisted the defendant.

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